

China-US Economic and Trade Agreement and Improvement of China's Intellectual Property Rule of Law

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Abstract: The outbreak of the China-US trade war is closely related to differences in the two countries' intellectual property legal systems. In order to promote friendly cooperation, China and the United States signed the *China-US Economic and Trade Agreement* upon consultation and negotiation. The *China-US Economic and Trade Agreement* includes detailed provisions on intellectual property protection, including trade secrets, pharmaceutical patents, patent protection, and e-commerce platforms. A thorough study of its provisions on intellectual property rights is very significant for improving China's rule of law of intellectual property. Based on the content of the *China-US Economic and Trade Agreement* and in light of China's intellectual property rule of law status quo, the impact of the signing of the *China-US Economic and Trade Agreement* is analyzed based on intellectual property protection in China involving trade secrets, pharmaceuticals, patents, and e-commerce platforms. The perfection of China's intellectual property rule of law should be approached in terms of three aspects: perfecting legislation, enforcing the law, and strengthening the judiciary.

Keywords: Sino-US trade war, *China-US Economic and Trade Agreement*, Intellectual property legal system

I. BACKGROUND OF THE GENERATION OF THE *CHINA-US ECONOMIC AND TRADE AGREEMENT*

Since China and the United States established diplomatic relations in 1979, their relationship has generally been continually strengthened with an increasing level of integration and rapidly developing bilateral trade. According to statistical data from China's Ministry of Commerce, Sino-US trade in goods exceeded 630 billion USD in 2018, registering 252 times that in 1979 when China and the United States established diplomatic relations. The two countries'

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two-way investment accumulated over 240 billion USD in 2018. Nowadays, the United States is China's largest export market and sixth-largest import country of origin. In 2018, China's trade surplus against the United States expanded and continued for the second year in a row the highest record since 2006 when statistics began. Calculating in RMB, China's trade surplus against the United States totaled 2.14 trillion RMB, an expansion of 14.7%.¹ However, along with continuously deepening Sino-US economic and trade relations, the intrinsic differences between their intellectual property legal levels have gradually been highlighted, friction regarding intellectual property rights has frequently occurred, and trade between them has been somewhat restrained. The United States has repeatedly utilized "Section 301" of the *United States Trade Law* and "Section 337 Investigation" of the *Tariff Act* to domestically create intellectual property barriers. China has so far become the country most frequently subject to "Section 337 Investigations".²

China and the United States have long been involved in disputes related to intellectual property protection. The United States has always believed that China's intellectual property protection is insufficient to support normal trade development between both countries, and that the flaws in China's intellectual property system have put the United States in a disadvantageous position in Sino-US trade and severely damaged its economy. At the same time, the United States has highly valued intellectual property protection, e.g. implementing economic and trade sanctions based on legal provisions against countries with weak intellectual property protection including China to draw other countries' intellectual property systems close to itself and maintain its economic development. On March 23, 2018, the United States challenged the Chinese government over intellectual property issues, accusing China of unfairly acquiring US technologies,³ thus building non-tariff barriers and initiating the trade war. On April 3, 2018, the United States announced its list of Chinese commodities on which additional tariffs will be levied based on the results of a "Section 301 investigation".⁴

1 The Ministry of Commerce Announces for the First Time Sino-US Trade Data in 2018, <https://baijiahao.baidu.com/s?id=1622899438642139042&wfr=spider&for=pc> (Last Visited on December 2, 2021).

2 Yawen Yang, Analysis of China-US Intellectual Property Trade Friction, *Advances in Economics, Business and Management Research*, No. 68, 2018, p. 392.

3 Ma Wei, Sino-US Frictions: Origin, Development Status Quo and Future Prospects, *Fudan American Review*, No. 2, 2019.

4 Event Study | What on Earth Is Section 301 Investigation, https://www.sohu.com/a/226418942_100046295 (Last Visited on December 4, 2021).

The deadlock in the Sino-US trade war has not only resulted in huge economic losses for both countries but also significantly affected the world market. China and the United States have always attempted to seek solutions to this trade war.⁵ Since July 2018, when the United States imposed the first round of tariffs on China, both countries' Presidents have met twice and communicated by telephone 7 times, both parties have participated in 13 rounds of high-level economic and trade consultations, and China's leader Xi Jinping has talked to the United States Trade Representative and Financial Minister more than 20 times during the China-US Comprehensive Economic Dialogues. After 19 months, China and the United States finally signed a first-stage economic and trade agreement, i.e. the *Economic and Trade Agreement between the Government of the People's Republic of China and the Government of the United States of America* (hereinafter referred to as "the *China-US Economic and Trade Agreement*").⁶ This solution has temporarily alleviated the highly tense situation between China and the United States, and represents a significant step for both countries.⁷ In the context of increasing pressure due to a global economic downturn, the signing of the *China-US Economic and Trade Agreement* between the world's largest and second-largest economies and two largest trade powers not only helps both countries to effectively settle economic and trade disputes and promotes their steady economic development but also considerably stabilizes confidence in global markets and mitigates uncertainty risks created due to Sino-US economic and trade friction.

II. CONTENT REGARDING INTELLECTUAL PROPERTY UNDER THE *CHINA-US ECONOMIC AND TRADE AGREEMENT*

Under the *China-US Economic and Trade Agreement*, a large amount of detailed content regarding intellectual property is at the beginning, i.e. Chapter A. Both parties mainly focus on trade secret protection, pharmaceutical marketing,

⁵ Wang Yuesheng and Lin Xuefen, Five Levels of Sino-US Economic and Trade Frictions, *China Business and Market*, No. 1, 2020.

⁶ Li Xin, Pending Tax Boost and Unsettled Conflicts — On the Signing of the First-stage Agreement between China and the United States, <http://cifer.pbcfs.tsinghua.edu.cn/index.php?m=content&c=index&a=show&catid=107&id=389> (Last Visited on December 4, 2021).

⁷ Zhang Monan, Long and Short Perspectives in the Context of the Signed *China-US Economic and Trade Agreement*, *Chinatimes*, January 20, 2020, Page 2.

and patent protection term extension, e-commerce platforms, geographical trademarks, as well as intellectual property litigation procedures and enforcement. The following is a brief analysis of four aspects: trade secrets, pharmaceuticals, patents, and e-commerce.

A. Trade Secrets

An annotation concerning trade secrets is included in the preface of Section B, Chapter A of the *China-US Economic and Trade Agreement*. It defines “confidential business information” as “information concerning or relating to the trade secrets, processes, operations, style of works, or apparatus, or to the production, business transactions, or logistics, customer information, inventories, or amount or source of any income, profits, losses, or expenditures of any person, natural or legal, or other information of commercial value, the disclosure of which is likely to have the effect of causing substantial harm to the competitive position of such person from which the information was obtained”. In its preface, “confidential business information” is listed as part of the same protection scope as trade secrets. This essentially requires expanding the traditional trade secret protection scope, which will materially influence China’s existing trade secret protection.⁸

The concept of “confidential business information” is construed for the purpose of Article 1.9. This article requires China to strengthen its protection of confidential information by government personnel or third-party experts who have access to specific confidential information in any civil, criminal, administrative, or regulatory proceedings. The information requiring protection here is “confidential business information” that includes “trade secrets”.⁹ In practice, even if a trade secret itself is not inappropriately disclosed, disclosing information closely related to the trade secret will also potentially threaten its confidentiality. For example, Chinese and American laws both provide that “reverse engineering” is legal and using it to obtain trade secrets is not considered infringement. Holders of trade secrets can protect them by listing relevant products, services, data, and other information not aligned with the statutory “trade secret” definition as “confidential business information” for agreed protection by signing confidentiality agreements with relevant parties while providing that

⁸ See the *Economic and Trade Agreement between the Government of the People’s Republic of China and the Government of the United States of America*.

⁹ *Ibid.*

reverse engineering against the other party based on the contract is forbidden.¹⁰

B. Pharmaceuticals

As pharmaceuticals are a significant guarantee of the general public's safety and health, they have always been a major focus of attention. China is also facing the challenge of intellectual property protection for imported pharmaceuticals. In order to promote both parties' cooperation in the pharmaceutical sector and more effectively meet patients' needs, the *China-US Economic and Trade Agreement* requires both parties to provide effective protection and enforcement of pharmaceutical-related intellectual property rights (including patents and undisclosed test or other data submitted as a condition for marketing approval).

Article 1.10, Section C of the *China-US Economic and Trade Agreement* stipulates on supplemental data for pharmaceutical patents. Whether this supplemental data is allowed has always been a heated intellectual property issue between China and the United States.¹¹ China's *Patent Law* lacks legal regulation on pharmaceutical patents. Moreover, the *China-US Economic and Trade Agreement* requires that China shall permit pharmaceutical patent applicants to rely on supplemental data to fulfill relevant requirements on sufficient disclosures and inventive steps, as well as during proceedings such as patent examinations, patent reviews, and judicial processes.

Article 1.11 of the *China-US Economic and Trade Agreement* mentions an effective mechanism for early resolution of patent disputes. It essentially requires China to establish a pharmaceutical patent linking system where generics should, when applying for marketing, consider the patent status of marketed pharmaceuticals and "link" the marketing review of generics with the patent status of innovative pharmaceuticals to prematurely settle patent infringement disputes potentially arising when marketing generics. This system was first established under the United States' *Drug Price Competition and Patent Term Restoration Act* of 1984, and was designed to reduce the conflicts of interest between original drugs and generics, and was also intended to balance

10 Intellectual Property Provisions under the *Economic and Trade Agreement between the Government of the People's Republic of China and the Government of the United States of America*, <http://www.tradeinvest.cn/information/5340/detail> (Last Visited on December 4, 2021).

11 Construing the Intellectual Property Chapter of the *China-US Economic and Trade Agreement* Article by Article, https://www.sohu.com/a/368413865_825373 (Last Visited on December 4, 2021).

citizens' pharmaceutical expenses and demands.¹² The *China-US Economic and Trade Agreement* requires China to provide a system to provide: 1) a notice to a patent holder or other stakeholders that another person is seeking to market relevant products during an applicable patent's term; 2) adequate time and opportunities for this patent holder to seek available remedies prior to marketing others' products; 3) these remedies are expeditious judicial or administrative remedies; 4) civil, judicial, or administrative proceedings and expeditious remedies, for resolving disputes concerning a patent's validity or infringement.

Article 1.12 provides for a system of extending pharmaceutical patent terms. Pharmaceuticals are subject to complicated approval procedures before marketing. The *China-US Economic and Trade Agreement* requires that China shall extend a patent term or the term of a patent's rights to compensate for unreasonable delays that occur when granting the patent or during marketing approval for a new pharmaceutical product, its approved usage method, or a product manufacturing method. Moreover, China may "limit such adjustments to no more than five years and may limit the resulting effective patent term to no more than 14 years from the date of marketing approval in China".

C. Patents

Section D, Chapter 1 of the *China-US Economic and Trade Agreement* stipulates on effective patent term extension, specifically in Article 1.12. Effective patent term extension involves two types of content: to compensate for unreasonable delays not attributable to the applicant that occur when granting the patent; to compensate the patent owner for unreasonably curtailing the effective patent term as a result of the pharmaceutical product marketing approval process. This article refers to the United States' pharmaceutical patent protection term compensation system, which means that pharmaceutical marketing is subject to the Food and Drug Administration (FDA)'s compulsory review procedures, and hence pursuant to the *Drug Price Competition and Patent Term Restoration Act*. Therefore, the patent owner has access to a compensation period of not more than 5 years provided that the effective patent term is no more than 14 years from the date of pharmaceutical marketing approval.¹³ In light of

12 Guo Ruyuan, Development Status Quo and Reflections on China's Pharmaceutical Patents, *Electronics Intellectual Property*, No. 8, 2019.

13 Liang Zhiwen, Chinese Path to Pharmaceutical Patent Protection Term Compensation System — Improvement of the Patent Law Amendment Draft (2019), *Law and Modernization*, No. 4, 2019.

Article 1.12 of the *China-US Economic and Trade Agreement*, China is also obliged to compensate the pharmaceutical patent owner for the same years of the patent protection term, while the patent owner is entitled to request compensation for unreasonable delays not attributable to the applicant. These unreasonable delays shall at least include “a delay in the issuance of the patent of more than four years from the date of filing of the application in China, or three years after a request for examination of the application, whichever is later”.

Moreover, as for delays owing to marketing approval, the United States provided for the patent term adjustment mechanism under the *American Inventors Protection Act* in 1999. The patent review period in the United States is three years from application to granting, so the patent term adjustment mechanism regulates that compensation should be offered regarding the patent term if it takes the United States Patent and Trademark Office over three years to review the patent. Considering the difference in patent application systems between China and the United States, the *China-US Economic and Trade Agreement* regulates that the duration as a compensation condition shall be four years from the date of filing of the application or three years after a request for examination of the application.¹⁴

Without considering the priority of invention patents, China's patent protection term starts from the granting date and ends 20 years after the application day. Terms of multiple patents applied on the same day will terminate at the same day, but the starting points of the patent protection terms may be entirely different, which may affect benefits due to patent owners. Therefore, it is reasonable to compensate the patent owners for delays during the review.¹⁵

D. E-commerce

The beginning of Section E, Chapter 1 of the *China-US Economic and Trade Agreement* addresses piracy and counterfeiting issues on e-commerce platforms. For example, it states that “In order to promote the development of e-commerce, China and the United States shall strengthen cooperation and jointly and individually combat infringement and counterfeiting in the e-commerce market. The Parties shall reduce piracy and counterfeiting, including by reducing barriers, if any, to making legitimate content available in a timely manner

¹⁴ *Supra* n. 11.

¹⁵ *Ibid.*

to consumers and eligible for copyright protection, and providing effective enforcement against e-commerce platforms”.

Article 1.13 requires that China shall provide expeditious and effective enforcement procedures against infringement that occurs online or in e-commerce, including an effective notice and takedown system. China shall eliminate liability for erroneous takedown notices submitted in good faith, extend the deadline for right holders to file a judicial or administrative complaint after receiving a counter-notification to 20 working days, and also penalize notices and counter-notifications submitted in bad faith to ensure valid takedown notices and counter-notifications.

Subsequently, Article 1.14 specifies that the Parties shall combat the prevalence of counterfeit or pirated goods on e-commerce platforms by effectively acting regarding major e-commerce platforms that do not take necessary measures against infringements of intellectual property rights. This Article also requires China to revoke the online business licenses of e-commerce platforms that have repeatedly failed to curb the sale of counterfeit or pirated goods.¹⁶

The United States has long been dissatisfied about China's efforts to crack down on counterfeit and pirated products. Considering the regulations on e-commerce platforms under the *China-US Economic and Trade Agreement*, e-commerce platforms should be more careful to comply with laws and regulations when conducting business in the future.

III. INFLUENCE OF THE *CHINA-US ECONOMIC AND TRADE AGREEMENT* ON CHINA'S INTELLECTUAL PROPERTY RULE OF LAW

In the last decade, China's legislation on intellectual property protection has developed significantly. This legislation started late compared with developed countries but has developed rapidly and has been very successful. However, when faced with the complicated international business environment, China's intellectual property protection is still insufficient. The signing of the *China-US Economic and Trade Agreement* will greatly improve China's intellectual property rule of law while contributing to innovation protection and attracting foreign intellectual property rights to China. This signing can help to promote

¹⁶ *Supra* n. 8.

high-quality economic development.

A. Influence on China's Trade Secret Protection

Overseas investors have always focused on protection of trade secrets. In China's judicial system, besides competitors or third parties stealing and embezzling trade secrets, inappropriate disclosure during administrative and judicial procedures has also been a major cause of the exposure of trade secrets. Hence, Article 1.9 of the *China-US Economic and Trade Agreement* juxtaposes "trade secrets" and "confidential business information" as confidential content that the claim of government personnel or third-party experts is restricted. Despite regulations on administrative organs' confidentiality obligations under Chinese laws such as the *Law against Unfair Competition*, the *Civil Servant Law* and the *Foreign Investment Law*, their confidentiality obligations are limited to "materials and information of trade secrets" without including "confidential business information", i.e. lower-secrecy trade secret information that still requires administrative organs to maintain its confidentiality. Moreover, the specified confidentiality obligations have abstract content and the penalties imposed on the perpetrators concerned are also limited to administrative sanctions, so it cannot effectively protect the rights and interests of trade secret holders. Moreover, the Agreement requires the establishment of an exemption procedure to government organs as well as a dissenting procedure to third parties respectively focused on the disclosure of trade secrets. China's legislation currently lacks a system to protect these secrets. A solid system may be built in the future in compliance with the *China-US Economic and Trade Agreement*.

In addition, the *China-US Economic and Trade Agreement* has proposed more comprehensive and detailed requirements on trade secret protection in terms of actors liable for trade secret misappropriation, prohibited acts constituting trade secret misappropriation, allocation of burden of proof, provisional measures, criminal protection, and government agency protection. Regarding actors liable for trade secret misappropriation (including natural persons, groups of persons, and legal persons) and prohibited acts constituting trade secret misappropriation (e.g. electronic intrusions, breach of statutory confidentiality obligations, and other prohibited behaviors), Article 9 of China's current *Law against Unfair Competition* has regulations related to these requirements. Regarding allocation of burden of proof, Article 32 of the *Law against Unfair Competition* as amended in 2019 has regulations corresponding to requirements

under the *China-US Economic and Trade Agreement*, i.e. burden of production of evidence or burden of proof, as appropriate, shifts to the accused party where a trade secret holder has produced *prima facie* evidence of a reasonable indication of the accused party's trade secret misappropriation. Regarding provisional measures, the *China-US Economic and Trade Agreement* requires that China shall identify the use or attempted use of claimed trade secrets as an "urgent situation" that provides its judicial authorities with the authority to adopt act preservation measures based on a case's facts and circumstances. This situation is basically identical with Article 6 of the *Provisions of the Supreme People's Court on Several Issues Concerning the Application of Law in the Trial of Preliminary Injunction Cases Involving Intellectual Property Disputes* effective from January 1, 2019.

In terms of legislation, although China has mostly addressed the Agreement's requirements, specific regulations are disorganized and must be further arranged and improved in the future.

B. Influence on China's Pharmaceutical-related Intellectual Property Protection

Article 1.12 of the *China-US Economic and Trade Agreement* extends the effective patent term for pharmaceuticals, which content is somewhat represented in Article 17 of the *Opinions on Deepening the Reform of the Review and Approval System and Encouraging the Innovation of Drugs and Medical Devices*. China has explicitly proposed to "carry out pilot projects of the pharmaceutical patent term compensation system, choosing some new drugs for trial and making appropriate patent term compensations to drugs whose marketing has been delayed by clinical drug experiments and review and approval procedures".¹⁷ Article 4 of the *Opinions on Strengthening the Protection of Intellectual Property Rights* of 2019 has also reiterated the need to establish a pharmaceutical patent term compensation system. Considering the complicated pharmaceutical approval system's significant influence on the actual patent protection term, as well as the enormous potential annual profit after a pharmaceutical is marketed, if China officially implements this provision under the *China-US Economic*

¹⁷ The General Office of the CPC Central Committee and the General Office of the State Council printed and issued the *Opinions on Deepening the Reform of the Review and Approval System and Encouraging the Innovation of Drugs and Medical Devices*, http://www.gov.cn/gongbao/content/2017/content_5232362.htm (Last Visited on December 4, 2021).

and Trade Agreement, this will affect its pharmaceutical patent protection practices.

Based on the above analysis, China's current policy direction is consistent with the regulations on pharmaceutical-related intellectual property protection under the *China-US Economic and Trade Agreement*, but legislative implementation is still required. If China officially implements these regulations, this will tremendously reform and profoundly influence its pharmaceutical patent protection practices.

C. Influence on China's Patent Protection

China's *Patent Law* has been amended three times since its promulgation in 1984. On December 5, 2018, an executive meeting of the State Council adopted the *Amendment of Patent Law (Draft)*. This Amendment Draft was revised based on the previous three Amendments, proposing to further increase infringement costs and protect patent inventors' rights.¹⁸

At the State Council's executive meeting on July 17, 2019, its attendees emphasized the need to enhance the effectiveness of intellectual property review and to expedite development of the patent review intelligence system to ensure reduction of high-value patent review periods to 17.5 months before the end of the year.¹⁹ They proposed that invention patent review periods would be shortened to an average of around 16 months during the next four years, and to an average of around 11 months for high-value patent review periods, which would be currently the fastest in the world.²⁰ Therefore, combining China's existing rapid patent review practices, regulations under the *China-US Economic and Trade Agreement* may have a limited influence on Chinese patents' authorized terms.

D. Influence on Intellectual Property Protection on China's E-commerce Platforms

The website people.com.cn's Public Opinion and Public Policy Research Center

18 China's Patent Law to be Amended for the Fourth Time, <https://baijiahao.baidu.com/s?id=1620151392896639159&wfr=spider&for=pc> (Last Visited on December 4, 2021).

19 Executive Meeting of the State Council, <http://www.gov.cn/guowuyuan/cwhy/20190717c23/mobile.htm> (Last Visited on December 4, 2021).

20 Shen Changyu, Invention Patent Review Periods to Be Shortened to Around 16 Months on Average in the Future Four Years, http://www.acfic.org.cn/ddgh/bwzc/201904/t20190426_120592.html (Last Visited on December 4, 2021).

as well as its Copyright Channel Department jointly issued the *Research Report on China's E-commerce Intellectual Property Protection Innovative Practices (2019)*. This report thoroughly examined the rule of law and public opinion situations of intellectual property policy facing China's e-commerce industry. It also comprehensively evaluated the innovative intellectual property protection practices and prominent achievements of mainstream e-commerce platforms. These platforms have continuously optimized their mechanism, comprehensively upgraded their rule systems, implemented strict review and control measures, upgraded their technology, strengthened their source control, gradually achieved whole-chain intellectual property protection, and have successfully progressed towards cracking down on fake products.

As China's e-commerce industry has grown, intellectual property protection has become an urgent issue and one of the largest challenges during its e-commerce industry's development. In 2018, China became the world's first country to formulate and implement the *Law on Electronic Commerce*, providing the world with a Chinese method for e-commerce intellectual property protection. Article 41 of the *Law on Electronic Commerce* provides that e-commerce platform operators should rely on this law to establish intellectual property protection rules, cooperate with intellectual property rights holders, and protect intellectual property rights.

Article 1.14 of Section E, Chapter 1, *China-US Economic and Trade Agreement* requires that China shall ensure that e-commerce platforms may have their network operating licenses revoked for repeatedly failing to curb the sale of counterfeit or pirated goods. When faced with increasing amounts of intellectual property infringement cases on e-commerce platforms in the future, China should adopt more measures to restrain these platforms and crack down on pirated and counterfeit goods.

IV. SUGGESTIONS ON IMPROVING CHINA'S INTELLECTUAL PROPERTY RULE OF LAW

A. Improve Intellectual Property Legislation

1. Accelerate Revisions of China's Intellectual Property Legal System

The *China-US Economic and Trade Agreement* has detailed regulations on ten aspects of intellectual property rights, including trade secrets and confidential

business information, pharmaceutical-related intellectual property, patents, piracy and counterfeiting on e-commerce platforms, manufacture and export of pirated and counterfeit goods, protection of geographical indications, malicious preemptive registration regarding trademarks, judicial enforcement and procedure in intellectual property cases, and bilateral cooperation on intellectual property protection. Conflicts exist between some of these regulations and China's current intellectual property legal system, so the signing has proposed increased demands for China's intellectual property legislation. Hence, China should improve its intellectual property legislation based on the following aspects in reference to the *China-US Economic and Trade Agreement*.

First, enhance protection of trade secrets. Pursuant to the *China-US Economic and Trade Agreement*, "the Parties shall eliminate any requirement that the holder of a trade secret establishes actual losses as a prerequisite to initiation of a criminal investigation for misappropriation of a trade secret". China's previous regulation on "the criminal threshold of a trade secret" is "over 500,000 RMB".²¹ Combining practical examples, China's previous threshold established for launching criminal protection was indeed too high, which has given criminals opportunities and may prevent the infringed from protecting their rights and interests. Cancellation of this condition has provided convenient for protecting the intellectual property rights of domestic and foreign enterprises within and outside China. Subsequently, relevant content of the *Criminal Law* and supporting laws and regulations should be revised to align them with the *China-US Economic and Trade Agreement*.²²

Second, establish a pharmaceutical patent linking system. China had proposed to establish a pharmaceutical patent linking system as early as in Article 16 of the normative document *Opinions on Deepening the Reform of the Review and Approval System and Encouraging the Innovation of Drugs and*

21 See Provisions (II) of the Supreme People's Procuratorate and the Ministry of Public Security on the Standards of Filing Criminal Cases under the Jurisdiction of the Public Security Organs for Investigation and Prosecution.

22 On September 12, 2020, the Supreme People's Court and the Supreme People's Procuratorate promulgated the Interpretation (III) of Several Issues Concerning the Specific Application of the Law in the Handling of Criminal Cases Involving Infringements upon Intellectual Property Rights. This Interpretation is effective from September 14, 2020, with the criminal standard of trade secret infringement reduced to RMB 300,000. The Supreme People's Procuratorate and the Ministry of Public Security printed and issued the Decision on Revising the Standards of Filing Trade Secret Infringement Criminal Cases for Investigation and Prosecution on September 17, 2020, and revised Article 73 of the Provisions (II) of the Supreme People's Procuratorate and the Ministry of Public Security on the Standards of Filing Criminal Cases under the Jurisdiction of the Public Security Organs for Investigation and Prosecution pursuant to the said judicial interpretation.

Medical Devices promulgated in 2017. This was done to protect patent holders' legitimate rights and interests, reduce risks of generics infringing on patents, and encourage generics' development. It was also intended to establish a drug review and approval as well as pharmaceutical patent linking system. Article 4 of the *Opinions on Strengthening the Protection of Intellectual Property Rights* printed and issued by the General Office of the CPC Central Committee and the General Office of the State Council in 2019 also mentioned that the pharmaceutical patent linking system should be considered and established. It follows that relevant regulations under the *China-US Economic and Trade Agreement* are consistent with Chinese legislation. Owing to the signing of the *China-US Economic and Trade Agreement*, provisions regarding patent linking should be added to the *Patent Law* which is under its fourth amendment.

Third, adjust the effective terms of pharmaceutical patents. At the patent owner's request, China shall provide an adjustment of the patent term or the term of the patent rights for a patent covering a new product, its approved method of use, or a method of making the product to compensate the patent owner for unreasonably curtailing the effective patent term resulting from the marketing approval process regarding that product's first commercial use in China. Since 2018, China has optimized and accelerated marketing approval processes for new drugs, but these processes remain time-consuming and will affect the length of the drug's profitability in terms of pharmaceutical patents. The process from early-stage R&D to marketing of new drugs consumes extensive time and capital. It will not only tremendously influence holders' interests but also affect drug R&D initiatives. Referring to the term extension system under the *China-US Economic and Trade Agreement*, China should also safeguard holders' interests by entitling pharmaceutical patents to sufficient protection and compensation for time consumed during the marketing process.²³

Fourth, improve intellectual property protection legislation on e-commerce platforms. According to the 42nd Investigation Report of the China Internet Network Information Center (CNNIC), as of June 2018, the scale of Chinese online shopping users had reached 569 million, registering 6.7% growth compared with the end of 2017. The continuous development momentum of e-commerce has made it an important sector and source of economic growth for China's

23 Wang Xijiang, Signals Released in the Section of "Effective Patent Term Extension" under the *China-US Economic and Trade Agreement*, <http://www.kangxin.com/html/1/173/174/351/10523.html> (Last Visited on December 4, 2021).

national economy.²⁴ At the same time, it is essential to address the urgent problem of frequent intellectual property infringement on e-commerce platforms. Some e-commerce platforms call themselves self-creation platforms and pretend to sell well-known brands by using other companies' brand names. On the other hand, "cheap copies" of luxury goods commonly appear on these platforms. In the future, China should use legislation to strengthen punishment of intellectual property infringement on e-commerce platforms, develop intellectual property protection regulative standards for these platforms, increase fines, and revoke the online business licenses of these platforms for repeatedly selling counterfeit or pirated goods. Moreover, legislation can be used to lower safeguarding thresholds for intellectual property rights to better guarantee rights holders' interests.

Currently, according to explicit and feasible intellectual property protection content specified under the *China-US Economic and Trade Agreement*, China should gradually and quickly fill the loopholes in its intellectual property legislation, as well as improve and implement its existing legislative system. This is very significant for its economy's healthy development and that of future Sino-US economic and trade relations.

2. Formulate a Comprehensive Intellectual Property Law

A code is "a relatively systematic legislative document compiled from an existing department law".²⁵ China currently has laws on intellectual property protection such as the *Law against Unfair Competition*, the *Copyright Law*, the *Patent Law*, and the *Trademark Law*. Functional departments are responsible for formulating laws. When they enforce these laws, repetition and conflict makes it difficult for them to choose specific means of enforcement. Therefore, Chinese legislative institutions should develop a comprehensive intellectual property code that includes principle and specific rules to adapt to new issues in the intellectual property sector.

After hundreds of years, intellectual property law theories have gradually become well-developed. Successful national-level intellectual property codes include the 1992 *French Intellectual Property Code* and the *Intellectual Property*

24 Top Ten Rule of Law Events in China's Network Information Sector in 2018, <http://www.szmag.net/wap/news/show/id/404775.html> (Last Visited on December 4, 2021).

25 Wang Taiping, Academic Law, Codex Law and Intellectual Property Codification, *Electronics Intellectual Property*, No. 8, 2006.

Code of the Philippines,²⁶ while international-level codes include the WTO's *Agreement on Trade-related Aspects of Intellectual Property Rights*. Improving and developing intellectual property will undoubtedly help countries to continuously grow their economy. Therefore, if China develops a systematic and logical intellectual property legal system by integrating relevant theories, it will have achieved a significant level of progress in its intellectual property protection.

Developing an intact intellectual property code certainly requires a sufficient amount of patience and meticulousness. Instead of simply compiling existing laws and regulations per specific orders, compiling an intellectual property code requires reviewing current Chinese legal texts on the intellectual property system, abolishing old-fashioned, outdated, and even contradictory provisions, and addressing defects in the current intellectual property system to ensure a complete intellectual property legal system that can adapt to recent developments and has coordinated and consistent content.²⁷ It should be noted that if formalism is considered and an intellectual property code is promulgated without painstakingly weighing the provisions, this hasty legislation will probably produce legislation that is disjointed from reality and hence involves a less authoritative intellectual property code. Chinese legislative institutions can refer to countries with complete and advanced intellectual property legislative systems. They can also combine China's national conditions and future intellectual property development directions when formulating a prospective, comprehensive, and practical intellectual property code.

B. Enhance Enforcement of Intellectual Property Protection

In recent years, the international community has recognized China's progress in intellectual property protection. Regarding administrative enforcement alone, from 2013 to 2018, China investigated and prosecuted 192,000 patent infringement and counterfeiting cases, as well as 173,000 trademark infringement and counterfeiting cases, thus powerfully safeguarding right holders' legitimate rights and interests.²⁸ In 2018, Chinese President Xi Jinping indicated at the 19th General Assembly of Academicians of the Chinese Academy of Sci-

²⁶ *Ibid.*

²⁷ *Ibid.*

²⁸ 2018 High-level Forum on China IP Protection, <http://www.sipo.gov.cn/twzb/2018zgzcqbhgclt/index.htm> (Last Visited on December 4, 2021).

ences and the 14th General Assembly of Academicians of the Chinese Academy of Engineering that China should enhance its enforcement of intellectual property protection and improve its intellectual property service system.²⁹ Although China has been increasing its emphasis on intellectual property protection, it still must improve many aspects of its intellectual property protection. China should further enhance its enforcement of intellectual property protection to cope with frequent infringement of intellectual property rights.

First, introduce a punitive compensation system. Despite China's recently greatly reinforced punishment regarding intellectual property, it still needs to improve this system. China should further strengthen its comprehensive intellectual property protection, improve the quality and efficiency of its intellectual property review, introduce a punitive compensation system, significantly raise law-breaking costs, and severely punish intellectual property infringements. It can also include intentional intellectual property infringements as part of corporate and individual credit records to increase the public's awareness of intellectual property protection.

Second, strengthen enforcement of border security. China should reinforce cooperation with other countries and work with them to enforce border security so it can reduce the number of counterfeit and pirated goods, including border exports or transfers. Inspection, detention, seal-up, administrative confiscation, and other customs enforcement powers should be exercised on exported or transferred counterfeit and pirated goods to prevent them from circulating in domestic and foreign markets.

Third, cultivate professional intellectual property enforcement talent. China's intellectual property enforcement departments have weak enforcement forces, insufficient investigation and prosecution against infringements, low-performing enforcement teams, and a low level of enforcement professionalism. Professional intellectual property enforcement talent should be provided with sufficient expertise and professionalism. The *China-US Economic and Trade Agreement* requires China to increase the number of trained enforcement personnel, substantially increase training that targets customs enforcement personnel, significantly increase the enforcement actions, and release online quarterly

29 Xi Jinping Attended the Opening Ceremony of the 19th General Assembly of Academicians of Chinese Academy of Sciences and the 14th General Assembly of Academicians of Chinese Academy of Engineering and Delivered Important Speeches, http://www.gov.cn/xinwen/2018-05/28/content_5294268.htm (Last Visited on December 4, 2021).

reports to provide updates on their enforcement actions. In the future, China should focus on cultivating a batch of high-quality and high-level professional intellectual property enforcement talent for dispatching to intellectual property enforcement organs to solve the dilemma of China's current lack of professional intellectual property enforcement talent.

C. Strengthen Intellectual Property Judicature

First, establish additional intellectual property courts. China has strengthened its judicial protection by establishing intellectual property courts in the three big cities of Shanghai, Beijing, and Guangzhou, while establishing a batch of dedicated intellectual property tribunals within the intermediate people's courts in some cities. However, as intellectual property levels develop and the public's awareness of intellectual property protection increases, more intellectual property cases will be settled, and there is currently an insufficient amount of intellectual property courts. China should establish more independent intellectual property courts in its large and medium-sized cities as well as intellectual property tribunals in smaller cities. These can provide convenient and professional trials for safeguarding intellectual property rights and developing a business environment that encourages and protects innovation.

Second, develop an intellectual property judicial hearing system. China has an increasing number of intellectual property cases and should implement its splitting mechanism for complex and simple cases when hearing intellectual property cases. Hearing procedures and forms should be improved based on each case's conditions to differentiate cases with different characteristics and levels of complexity. This will shorten the hearing periods for intellectual property cases, reduce case hearing costs, and establish a judicial hearing system for Chinese intellectual property cases.

V. CONCLUSION

The signing of the *China-US Economic and Trade Agreement* is the first-stage result of the Sino-US trade war. An in-depth understanding of its specific content regarding trade secrets, pharmaceutical patents, patent protection, and e-commerce platforms helps to perceive the future trends of China-US trade and is very significant for improving China's establishment of its intellectual property rule of law. An analysis of the influence of the signing of the *China-US Eco-*

nomic and Trade Agreement on China's intellectual property rule of law combined with its current intellectual property rule of law system has shown that its intellectual property rule of law should be improved based on three aspects.

First, China's legislation should be improved. China should accelerate the linkage between its intellectual property legal system and the *China-US Economic and Trade Agreement*. Moreover, when China has a solid legislative foundation and well-developed legislative conditions, it should formulate a comprehensive and systematic intellectual property law.

Second, China should ensure a strict system of law enforcement. It should introduce a punitive compensation system while strengthening its enforcement of border security and cultivate more professional intellectual property enforcement talent to cope with its weak intellectual property enforcement forces.

Lastly, China should reinforce its judiciary. When faced with increasing amounts of specialized cases regarding intellectual property, China should establish more intellectual property courts. In addition, China's courts should implement a splitting mechanism for complex and simple cases when hearing intellectual property cases to improve their efficiency.